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MERRILL GORDON

Of Counsel
Richard Bloom
Kenneth Bloom

September 12, 2014

Via email only to:

senrjones@senate.michigan.gov
sentschuitmaker@senate.michigna.gov
sensbieda@senate.michigan.gov
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Michigan Senate Judiciary Committee Chairman, Senator Rick Jones
Michigan Senate Judiciary Committee Members
Senator Tonya Schuitmaker
Senator Steven Bieda
Senator Tory Rocca
State Capital
Lansing, MI 48909

Re: Senate Bill 981
Senate Judiciary hearing date: September 16, 2014 @ 2:30 P.M.

Dear Chairman Jones and Committee Members Schuitmaker, Bieda and Rocca:

I write this letter with attachments in opposition to S.B. 981 and request an opportunity to be heard before the committee.

There was a previous attempt to adopt the substance of this bill in 2012. In 2012 the Michigan Supreme Court considered a proposal with a less restrictive 14 day waiting period. This was ADM 2010-22 seeking to amend Michigan Rule of Professional Conduct 7.3. Public hearing was held before the Michigan Supreme Court on March 28, 2012, at which time this matter was considered. (Please see attached Michigan Supreme Court Release and Notice of Public Administrative Hearing regarding this matter).

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I testified at this hearing in opposition to that proposal and submitted the attached letter dated February 27, 2012 in opposition to the proposed amendment. By attachment hereto, I incorporate that letter to this letter and ask that you consider both regarding this matter and that these letters with attachments be made part of the public record.

After comment period and public hearing the Supreme Court determined not to adopt this proposal as an amendment to the Michigan Rule of Professional Conduct 7.3 and the matter was administratively closed by the Supreme Court on June 6, 2012.

It is my belief that there was not then nor is there now a proper or sufficient basis for the imposition of the restrictions contained in Senate Bill 981.

For the reasons set forth in this letter and those contained in my attached letter of February 27, 2012, I urge this committee to vote against this bill and not pass this bill out of committee.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'M. Gordon', with a long horizontal stroke extending to the right.

Merrill Gordon

MG/mmh

Enclosure

cc: Ms. Sandra McCormick, smccormick@senate.michigan.gov
Ms. Renee Edmondson, redmondson@house.mi.gov

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MERRILL GORDON

Of Counsel
Richard Bloom
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February 27, 2012

VIA U.S. MAIL AND
EMAIL MSC_clerk@courts.mi.gov

Mr. Corbin R. Davis
Clerk Michigan Supreme Court
P O Box 30052
Lansing, MI 48909

Re: ADM 2010-22 and MRPC7.3

Dear Mr. Davis:

This letter is to advise the Court of my position in opposing the adoption of ADM 2010-22. Although I had been sending letters to prospective clients, based on filings in Circuit Court, and am aware of the proposed rule indicating that there should be a fourteen day waiting period before this type of letter could be sent, I believe that this waiting period is over broad and not warranted. Advising potential clients of the existence of litigation, is a service to these litigants. Further, I am offended at the characterization of this as "Trolling" and the rule being labeled an "anti-trolling" proposal by those in support of this proposal. This proposal seeks to artificially limit information that is a matter of public record. If the sealing of records is necessary, the Plaintiff should seek ex-parte relief to do so. The filing party should not be given an advantage by limiting a responding parties' access to information or representation. Any actions that a Plaintiff could take within 14 days after filing, such Plaintiff could take prior to filing. Thus obviating the need for a fourteen day waiting period, or any waiting period for that matter.

I received phone calls from many individuals to whom I have sent correspondence who have indicated to me that they were thankful that they were made aware that litigation was pending so that they could timely prepare for this litigation and hire counsel, myself or other counsel, to represent them in this matter without waiting an extended period of time, thus avoiding having their spouse or the opposing party gaining an advantage. If this proposal is

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adopted, Plaintiffs would have the same advantage this proposal seeks to control responding parties from having.

It seems to me that setting an artificial limit on the ability of a responding party to seek counsel and/or counsel seeking to help those responding parties by offering representation, is unfair and unwarranted. There is no limit to the extent of preparation a Plaintiff has in determining to move forward with divorce litigation, if this proposal is enacted, Defendant's would be severely disadvantaged in their ability to respond and be properly represented.

I bring to the Court's attention, my representation of an, active duty military service member and a resident of Hawaii, who was sued for divorce in the Oakland County Circuit Court. He was served on December 26, 2011, in Michigan while on leave, after filing was made on December 22, 2011, by his wife who had their child here in Michigan. He became a client of mine after I had sent him a letter concerning representation immediately after his wife had filed her Complaint. He had previously instituted divorce proceedings in Hawaii on December 16, 2011. His wife had not yet been served and was avoiding service. If he had not received my letter indicated above and been unaware of counsel to represent him he would have been prejudiced by his return to Hawaii without seeking counsel to respond to his wife's "Emergency Motion", concerning his daughter. Being properly represented by the undersigned resulted in the Oakland County Circuit Court declining jurisdiction in favor of the Court in Hawaii. This is but one of many instances where early representation has resulted in a level playing field for both litigating parties.

To the extent that prior violence is deemed to be an issue to be considered as is noted in the staff comments, surely minor restrictions as to the "solicitation" could be imposed such as a preclusion of "solicitation" of an individual when there is a Personal Protection Order filed. To the extent that Plaintiffs' attorneys need to properly arrange affairs of their clients at the outset of litigation, this should be completed prior to the filing of the Complaint. In reality, what is the difference in a Defendant's first knowledge being served with a Summons and Complaint by a process server or receiving a "solicitation" letter? There seems to be no difference affecting a Defendant's propensity for violence.

There is no limitation on broader market advertising, nor should there be. This restriction on solicitation unfairly limits the sole or small practitioner and others from seeking to timely advise potential clients of available services and puts Defendants at a disadvantage. In my opinion it is an unnecessary restraint. Proponents may cite limited circumstances, which are problematic for the filing spouse, but such anecdotal and infrequent circumstances should not dictate wholesale restrictions on such direct contact. On the whole, it has been my experience that individuals who receive information from me that litigation is pending are pleased that they have adequate timely information about the filing of the initial pleadings and timely information concerning representation.

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Should you wish me to provide additional information regarding this matter, I would be happy to do so.

Very truly yours,

A handwritten signature in cursive script, reading "Merrill Gordon", followed by a long horizontal flourish.

Merrill Gordon

MG/mmh

MICHIGAN SUPREME COURT



Office of Public Information

contact: Marcia McBrien | (517) 373-0129

FOR IMMEDIATE RELEASE

PROPOSED JUDICIAL CONDUCT RULES CHANGES ON AGENDA FOR MICHIGAN SUPREME COURT MARCH 28 PUBLIC ADMINISTRATIVE HEARING

Proposal specifies appropriate roles for judges at charity fundraisers and similar events

LANSING, MI, March 27, 2012 – A proposed clarification of ethics rules that prevent judges from soliciting donations for charities and similar organizations is on the agenda for the Michigan Supreme Court's public hearing tomorrow.

Canon 5 of the Code of Judicial Conduct allows judges to participate in "civic and charitable activities" that do not put a judge's impartiality in doubt or interfere with the judge's duties. But, while allowing a judge to "join a general appeal on behalf of an educational, religious, charitable, or fraternal organization," ethics rules bar judges from individually soliciting donations for such groups. The proposed changes would clarify that "[a] judge may speak on behalf of such an organization and may speak at or receive an award or other recognition in connection with an event of such an organization." The proposals would allow a judge to participate in the same ways at a law-related organization's fundraiser. But the amendments would also prohibit a judge from allowing his or her name to be used in fundraiser advertising, unless the judge was simply a member of an honorary committee or participating in a general appeal. (**ADM File No. 2005-11**).

The proposals for all public hearing items and their related comments are available online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.

The public hearing, which begins at 9:30 a.m., will take place in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice in Lansing.

Also on the Supreme Court's agenda:

- **ADM File No. 2010-22**, proposed amendment of Michigan Rule of Professional Conduct 7.3, "Direct Contact with Prospective Clients." The rule prevents attorneys from soliciting "professional employment from a prospective client with whom the lawyer has no family or prior professional relationship ..." The proposed amendment would add that, in family law cases, "a lawyer shall not initiate contact or solicit a party to establish a client-lawyer relationship until the initiating documents have been served upon that party or 14 days have passed since the document was filed, whichever action occurs first." The State Bar of Michigan's Representative Assembly suggested the service/14-day restriction to reduce the risk that a defendant in a family law case would assault the other partner, abscond with children, or commit "other illegal actions" before the papers can be served.

MICHIGAN SUPREME COURT

NOTICE OF PUBLIC ADMINISTRATIVE HEARING

Pursuant to Administrative Order No. 1997-11, the Michigan Supreme Court will hold a public administrative hearing on Wednesday, March 28, 2012, in the Supreme Court courtroom located on the sixth floor of the Michigan Hall of Justice, 925 W. Ottawa Street, Lansing, Michigan 48915. The hearing will begin promptly at 9:30 a.m. and adjourn no later than 11:30 a.m. Persons who wish to address the Court regarding matters on the agenda will be allotted three minutes each to present their views, after which the speakers may be questioned by the Justices. To reserve a place on the agenda, please notify the Office of the Clerk of the Court in writing at P.O. Box 30052, Lansing, Michigan 48909, or by e-mail at MSC_clerk@courts.mi.gov, no later than Monday, March 26, 2012.

Administrative matters on the agenda for this hearing are:

1. 2005-11 Proposed Alternative Amendments of the Code of Judicial Conduct.
Published at 490 Mich 1208 (Part 3, 2011).
Issue: *Whether to adopt one of the proposed alternatives of various Canons of the Code of Judicial Conduct, or take other action. Alternative A would combine Canons 4 and 5 so that obligations imposed regarding extrajudicial activities would be the same for law- and nonlaw-related activities. Alternative B would loosely model the ABA Model Code of Judicial Conduct, but the ABA's 15 model rules would be combined within Michigan's current two Canons 4 and 5 and would retain nearly all current language of Canons 4 and 5. Both alternatives would eliminate language in Canon 7 that prohibits judges from accepting testimonials and would clarify Canon 2 so that activities allowed in Canons 4 and 5 would not be considered a violation of "prestige of office." Also both proposals would clarify the scope of activities within which a judge may participate (especially when the activities would serve a fundraising purpose).*

2. 2010-22 Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct.
Published at 490 Mich 1219 (Part 3, 2011).
Issue: *Whether to adopt the proposed amendment of MRPC 7.3 that would limit the ability of an attorney to contact or solicit a defendant in a family-law case for 14 days after the suit is filed, or until the defendant is served (whichever occurs first).*
3. 2010-25 Proposed Amendment of Rule 7.210 of the Michigan Court Rules.
Published at 490 Mich 1205-1206 (Part 2, 2011).
Issue: *Whether to adopt the proposed amendment of MCR 7.210 that would require trial courts to become the depository for exhibits offered in evidence (whether the exhibits are admitted, or not) instead of requiring parties to submit those exhibits when a case is submitted to the Court of Appeals.*
4. 2010-26 Proposed Amendment of Rule 7.210 and Rule 7.212 of the Michigan Court Rules.
Published at 490 Mich 1206-1208 (Part 2, 2011).
Issue: *Whether to adopt the proposed amendments of MCR 7.210 and MCR 7.212 that would extend the time period in which parties may request that a court settle a record for which a transcript is not available and would clarify the procedure for doing so.*